CUMULATIVE DIGEST

CH. 21
FITNESS TO STAND TRIAL

§21

In re S.B., 2012 IL 112204 (No. 112204, 10/4/12)

1. As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

2. The court also concluded that a minor who is found "not not guilty" in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a "sex offender" as a person who is charged with a sex offense and "is the subject of a finding not resulting in an acquittal" at a discharge hearing under 725 ILCS 5/104-25(a), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found "not not guilty" is not acquitted, registration is required under the plain language of the Registration Act.

3. The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. (730 ILCS 150/3-5(c),(d)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found "not not guilty" being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found "not not guilty" from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature's oversight by allowing juveniles who are found "not not guilty" to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found "not not guilty" following a discharge hearing.

People v. Stahl, 2014 IL 115804 (No. 115804, 5/22/14)

1. A criminal defendant is presumed fit to stand trial. However, the defendant is unfit if due to his mental or physical condition he is unable to understand the nature and purpose

of the proceedings or assist in his defense.

Once a *bona fide* doubt of fitness is raised, the State has the burden of proving fitness by a preponderance of the evidence. Matters to be considered on the issue of fitness include, but are not limited to: (1) defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process; (2) defendant's ability to observe, recollect and relate occurrences, especially those surrounding the incidents alleged, and to communicate with counsel; and (3) defendant's social behavior and abilities, orientation as to time and place, recognition of persons, places and things, and performance of motor processes.

2. Because fitness is determined on the totality of the circumstances, the fact that defendant has amnesia concerning the events surrounding the crime does not in and of itself render him unfit to stand trial. However, defendant's amnesia is one factor to be considered.

3. Here, the trial court's finding that defendant was unfit was not contrary to the manifest weight of the evidence. The trial court found that defendant's amnesia resulting from a self-inflicted shooting on the night of the offense. All three psychiatric experts whose evidence was submitted by testimony or stipulation concluded that defendant had no recollection of the events surrounding the charges, and two of the three psychiatric witnesses concluded that defendant's short-term memory was substantially impaired and affected his ability to assist in his own defense. The third witness, although believing that steps could be taken at trial to compensate for defendant's short-term memory deficits, testified that defendant ranked in the lowest one percentile concerning short-term memory retention after 20 to 30 minutes. In addition, an expert witness who was a criminal defense attorney testified that defendant's amnesia could negatively affect his ability to assist defense counsel in that defendant did not know whether he had committed any of the acts and therefore could not relate his version of events, describe his state of mind at the time of the offense, meaningfully testify in his own defense, or decide how to plead.

The court concluded that under these circumstances, the trial court's finding that defendant was unfit was not contrary to the manifest weight of the evidence. The trial court's finding was affirmed.

People v. Cook, 2014 IL App (2d) 130545 (No. 2-13-0545, 12/23/14)

1. Due process prohibits the prosecution of a defendant who is unfit to stand trial. A defendant is unfit where, based upon a mental or physical condition, he is unable to understand the nature and purpose of the proceedings or assist in his defense.

Although the trial court's decision concerning fitness is usually reviewed under the abuse of discretion standard, the record is required to show that the court affirmatively exercised its judicial discretion when determining fitness. The trial court's failure to exercise its discretion when determining fitness concerns a substantial right and therefore can be reviewed under the plain error rule.

A determination that a defendant is fit may not be based solely on a stipulation to psychiatric conclusions or findings. Where the parties stipulate to an expert's testimony rather than to his or her conclusions, the trial court may consider the stipulation in exercising its discretion. However, the decision as to fitness must be made by the trial court, not by the experts. In other words, the trial court must analyze and evaluate the basis for the expert's opinion and may not merely rely on the expert's ultimate conclusion.

2. The record failed to show that the trial court exercised its discretion in determining that defendant was fit. The parties stipulated that the expert would testify consistently with his report "finding the defendant fit to stand trial." The record did not indicate that the trial

judge ever reviewed the report, which it received just before entering an order that defendant was fit. The trial judge did not discuss the basis for finding defendant to be fit, and did not question defendant or the attorneys on the issue of fitness. "[W]ithout anything to indicate that the court actually reviewed the report or knew of the basis for the finding, the record is at best ambiguous as to whether the court exercised its discretion as opposed to merely relying on [the expert's] ultimate conclusion."

3. The court stated:

> [I]t is incumbent upon the court to make a record reflecting that it did more than merely base its fitness finding on the stipulation to the expert's ultimate conclusion. The court must state on the record the factual basis for its finding, which must be more than a mere acceptance of a stipulation that the defendant is fit or that an expert found the defendant fit. . . . [H]ad the court stated that it read the report and agreed with [the expert's] conclusion based on the facts set out in the report, or had it recited the facts it relied on in making its own fitness determination, there would have been no ambiguity about the court's exercise of discretion.

4. In most cases where more than a year has passed since the original trial and sentencing, due process cannot be satisfied by a retrospective fitness determination. In exceptional cases, however, the issue of fitness at the time of trial may be fairly and accurately determined after the fact. **People v. Neal**, 179 Ill. 2d 541, 689 N.E.2d 1040 (1997). The court concluded that a retrospective fitness determination would satisfy due process in this case because the parties stipulated to all of the evidence and the judge could determine whether defendant was fit when he pleaded guilty and was sentenced. The cause was remanded for a retrospective determination of fitness.

(Defendant was represented by Assistant Defender Fletcher Hamill, Elgin.)

People v. Edwards, 2015 IL App (3d) 130190 (No. 3-13-0190, 5/6/15)

Under 725 ILCS 104-13(a), when a fitness issue involves defendant's mental state, the court shall order a fitness examination.

Here, the trial court signed an order drafted by defense counsel which stated:

> This matter coming on for a hearing on defendant's motion for expert witness and for fitness hearing, and for other relief, said motion being uncontested by the [State], and the Court finding that a bonafide doubt exist [sic] as to Defendant's fitness to stand trial under 725 ILCS 5/104-13.

An expert examined defendant and filed a report finding him fit to stand trial, but the trial court never conducted a fitness hearing. Defendant argued that the trial court erred in failing to conduct a fitness hearing after it signed an order finding a *bona fide* doubt of his fitness.

The Appellate Court rejected defendant's argument. In **People v. Hanson**, 212 Ill. 2d 212 (2004), the Supreme Court held that the grant of a defense motion for a psychological evaluation, without more, does not show that the trial court found a *bona fide* doubt of defendant's fitness. Here, defendant filed a motion pursuant to 104-13(a) requesting the trial court to appoint a qualified expert. Although the order signed by the trial court contained the language "*bona fide* doubt," it was defendant who drafted the order. The record provided no "indication whatsoever" that the court or State agreed with defense counsel, or raised their own *bona fide* doubt.

Under these circumstances, defendant merely requested an expert evaluation and there was no error in proceeding to trial without a fitness hearing.

The dissenting justice would have found that the trial court's explicit finding of a *bona fide* of defendant's fitness, as clearly stated in its written order, required the trial court to hold a fitness hearing.

(Defendant was represented by Assistant Defender Bryon Kohut, Ottawa.)

People v. Gipson, 2015 IL App (1st) 122451 (No. 1-12-2451, 5/27/15)

Where a defendant has been previously found unfit to stand trial, a presumption exists that he remains unfit until he is found fit at a valid fitness restoration hearing. At the conclusion of the hearing, the court may: (1) find defendant fit; (2) find the evidence insufficient to show that defendant's's fitness has been restored; or (3) seek additional information.

Fitness for trial involves a fundamental right and thus alleged errors concerning fitness may be reviewed as plain error. Although defendant failed to preserve the issue here, the Appellate Court reviewed it as plain error.

At the fitness restoration hearing in this case, the parties stipulated to the reports of two experts, Drs. Kelly and Wahlstrom. Dr Kelly concluded that defendant was fit to stand trial. Dr. Wahlstrom concluded that defendant was "marginally" fit to stand trial with medication. The trial court relied equally on both experts' opinions and found defendant fit to stand trial.

The Appellate Court reversed the trial court's finding. It noted that a defendant may only be found fit, fit with medication, or unfit. Dr. Wahlstrom's opinion, on which the trial court gave great weight, found defendant "marginally" fit. But Illinois recognizes no such qualification to a defendant's fitness. Accordingly, the trial court had an obligation to seek more information in order to understand what Dr. Wahlstrom meant by "marginally" fit.

The Appellate Court was also troubled by the trial court's statement that Dr. Wahlstrom "could not rule out" that defendant was fit to stand trial. The presumption of a restoration hearing is that defendant is unfit. The trial court must therefore "rule out the possibility that defendant was still unfit."

The case was remanded for a retrospective fitness hearing.

(Defendant was represented by Assistant Defender David Harris, Chicago.)

People v. Holt, 2013 IL App (2d) 120476 (No. 2–12–0476, 10/29/13)

As a matter of first impression, the court found that a person about whom there is a *bona fide* doubt of fitness is not entitled to require her attorney to assert that she is fit. The court concluded that counsel has a duty to protect the due process right not to be tried while unfit, and that counsel who believes his client to be unfit may assume that the client is incapable of acting in her own best interests.

In *dicta,* the court also noted that under Illinois precedent, an attorney need not assist a client who is competent to stand trial in an attempt to feign a mental condition for the purpose of obtaining a finding that he or she is unfit.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

People v. McCoy, 2014 IL App (2d) 130632 (No. 2-13-0632, 12/22/14)

There is no constitutional right to a jury at a fitness hearing. However, 725 ILCS 5/104-12 provides that the defense or the State may demand a jury, or the court may on its own motion order a jury, except in specified circumstances. The court concluded that unless the

statutory exceptions apply, a person whose fitness is being litigated has a statutory right to personally demand a jury determination of fitness. Thus, the trial court erred by failing to respond to defendant's repeated demands that his fitness be determined by a jury.

The court rejected the argument that a different result is required by **People v. Holt**, 2013 IL App (2d) 120476. **Holt** involved not whether the defendant could demand a jury determination of fitness, but whether a defense attorney is obligated to adopt the defendant's wishes and argue for a finding of fitness even where he or she believes that the defendant is unfit.

(Defendant was represented by Assistant Defender Paul Rogers, Elgin.)

People v. Miraglia, 2013 IL App (1st) 120286 (No. 1-12-0286, 12/2/13)

There is no constitutional right to a jury determination of defendant's fitness to stand trial. The provision for a jury determination of defendant's fitness is statutory in origin. By statute, either party may demand or the trial court may order a jury determination of defendant's fitness to stand trial except where (1) the issue is raised after trial has begun, (2) the issue is raised after conviction but before sentencing, or (3) the issue is being redetermined after an initial finding of unfitness. 725 ILCS 5/104-12. Whether a defendant is entitled to a jury determination of fitness is a question of statutory interpretation subject to *de novo* review.

Prior to trial, the State raised a question regarding defendant's fitness to stand trial. At defense counsel's request, the court conducted a hearing outside the presence of defendant at which facts relevant to defendant's fitness to stand trial were discussed. The court found no bona fide doubt of defendant's fitness based on the disclosed facts. On appeal, the Appellate Court remanded to the circuit court for a retrospective fitness hearing, finding that defendant had been denied her right to be present at a critical stage when the issue of her fitness was discussed outside her presence. On remand, the court denied defendant's request for a jury determination of her fitness.

The plain language of §104-12 indicates that defendant had no right to a jury determination of fitness when her demand for a hearing was made after trial began. The State raised the issue of defendant's fitness prior to trial, but neither party made a request for a jury fitness hearing. It was not until remand that defendant raised the issue of a jury determination of her retrospective fitness. In that circumstance, the statute provides that the court, not a jury, should determine defendant's fitness to stand trial.

(Defendant was represented by Assistant Defender Emily Wood, Chicago.)

People v. Moore, 408 Ill.App.3d 706, 946 N.E.2d 442 (1st Dist. 2011)

1. A criminal defendant is unfit to stand trial where he is unable to assist in his defense and understand the nature and purpose of the proceedings. Because it is a violation of due process to convict a defendant who is unfit, a fitness hearing is required where there is a *bona fide* doubt of fitness. When facts regarding a defendant's fitness are brought to the trial judge's attention and there appears to be a *bona fide* doubt of fitness, the court is required to *sua sponte* order a fitness hearing even if no request is made by the defense.

Whether there is a *bona fide* doubt of fitness depends on the facts of each case. The fitness inquiry implicates a wide range of factors, which may include any irrational behavior by the defendant, the defendant's demeanor at trial, any prior medical opinion on competence, and any representations by defense counsel concerning competence.

2. Where an expert witness testified at the pretrial fitness hearing that defendant needed to be on medication to be fit for trial, and the trial specifically found at that time that defendant would be fit to stand trial with medication, a *bona fide* doubt arose when the court

learned on the day jury selection was to begin that defendant had not been receiving his medication regularly. Although defense counsel failed to follow up on the trial court's request to investigate and did not raise the issue until after trial, counsel's inaction was not relevant to the judge's duty to *sua sponte* order a fitness hearing.

Because the trial court erred by not *sua sponte* ordering a fitness hearing, and it cannot be determined whether the defendant was fit when he was convicted of delivery of a controlled substance, the cause was remanded for a retrospective fitness hearing.

(Defendant was represented by Assistant Defender Todd McHenry, Chicago.)

People v. Mutesha, 2012 IL App (2d) 110059 (No. 2-11-0059, 11/19/12)

Although the filing of a notice of appeal vests jurisdiction in the Appellate Court, the trial court retains jurisdiction to decide matters that are independent of and collateral to the judgment on appeal. Collateral or supplemental matters include those lying outside the issues on appeal or arising subsequent to delivery of the judgment appealed from. Review of whether a trial court properly exercised jurisdiction is *de novo*.

Before the court ruled on defendant's post-trial motion and conducted a sentencing hearing, defendant was found unfit to be sentenced. He appealed from that finding. While the fitness appeal was pending, defendant was restored to fitness. The court then proceeded to deny the post-trial motion and impose sentence. Defendant appealed his conviction and sentence.

Hearings to reexamine fitness are provided by statute at maximum intervals of 90 days where a defendant is expected to become fit with treatment. 725 ILCS 5/104-20(a). Because the judgment restoring defendant to fitness was based on new facts, it was independent of and collateral to the judgment on appeal, and the trial court retained jurisdiction to hear and decide the matter.

The trial court did not have jurisdiction, however, to rule on defendant's post-trial motion and impose sentence after he was restored to fitness while the appeal from the finding that he was unfit was pending. Both the post-trial motion and the sentencing hearing were central issues in the criminal matter and were not collateral to the fitness appeal. The orders denying the post-trial motion and sentencing the defendant were therefore void. If the defendant wished to obtain a ruling on his post-trial motion and be sentenced immediately upon his restoration of fitness, he should have first moved to dismiss his pending fitness appeal.

The Appellate Court vacated the order denying the post-trial motion as well as defendant's sentence, and dismissed defendant's appeal.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

People v. Nichols, 2012 IL App (4th) 110519 (No. 4-11-0519, 11/27/12)

1. Due process requires that an unfit defendant not be placed on trial. When a *bona fide* doubt of fitness arises, the trial court may not proceed without first ordering a determination of the defendant's fitness. Whether a *bona fide* doubt of fitness exists is a matter within the trial court's discretion.

In evaluating the trial court's exercise of its discretion, the reviewing court must recognize that the trial court is in a superior position to view the defendant's behavior firsthand and to determine whether a *bona fide* doubt of fitness exists. A defendant is presumed to be fit, and is unfit only if because of a mental or physical condition he or she is unable to understand the nature of the proceedings or assist in the defense. The issue of fitness concerns only the defendant's functioning in the context of trial and sentencing. Thus,

a person may be fit for trial although he or she is otherwise mentally unsound.

Factors relevant to determining whether a *bona fide* doubt of fitness exists include the rationality of the defendant's behavior and demeanor at trial, any medical opinions on defendant's fitness, and defense counsel's representations concerning the defendant's competency. The use of psychotropic medications may indicate unfitness, but does not in and of itself override the presumption of fitness.

2. The court concluded that the record did not indicate that there was a *bona fide* doubt of fitness to stand trial. Although the presentence report indicated that defendant was being treated for schizophrenia at the time of trial and was taking psychotropic medication, the brief summary gave little detail about the condition, its likely effect on defendant's fitness, or how the medication might affect fitness. The court stated, "[N]othing we perceive indicates that defendant's schizophrenia manifested during trial or sentencing or impaired defendant's capacity for understanding the nature of the proceedings against him or his ability to present his defense."

Defendant represented himself at trial and sentencing, and the court found that his "sometimes artless representation" showed a lack of legal training rather than a *bona fide* doubt of fitness. The court noted that defendant followed the trial court's instructions, participated in jury selection, and formulated a strategy of defense for the case.

Finally, the court found that defendant's allegations of corruption on the part of the arresting officer were "not so plainly delusional and grandiose that, evaluating its exercise of discretion against a cold record, we would conclude the court erred in not ordering a fitness hearing."

Defendant's conviction was affirmed.

(Defendant was represented by Assistant Defender Allen Andrews, Springfield.)

People v. Olsson, 2012 IL App (2d) 110856 (Nos. 2-11-0856 & 2-12-0012 cons., 11/6/12)

Due process is satisfied by providing a defendant periodic review of his fitness on request while he is involuntarily committed to the custody of the Department of Human Services as provided by 725 ILCS 5/104-25(g)(2), after he has been found unfit to stand trial and the statutory extended period of treatment to attain his fitness has been unsuccessful. The requirement that a treatment plan report be filed with the court every 90 days after defendant's initial admission, which includes an opinion as to whether the defendant is fit to stand trial, helps the defense reach an informed decision whether to seek a fitness hearing.

People v. Orengo, 2012 IL App (1st) 111071 (No. 1-11-1071, 12/18/12)

"In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13," evidence of out-of-court statements made by the child is admissible as an exception to the hearsay rule under certain specified circumstances. 725 ILCS 5/115-10.

A discharge hearing is conducted pursuant to 725 ILCS 5/104-25 to determine whether to acquit a defendant of the charges when there has been a finding of unfitness. The discharge hearing is not a criminal prosecution. The defendant may not be convicted at the hearing. If the evidence is sufficient to establish his guilt, he is found not not guilty. But the purpose of the hearing is the same as that of a criminal trial—to test the sufficiency of the State's evidence of defendant's guilt of the charged crime. The standard of proof is the same. It follows that, unless otherwise noted in §104-25, the rules of evidence governing a criminal proceeding apply at a discharge hearing.

Subsection (a) of §104-25 provides that hearsay or affidavit evidence may be admitted at a discharge hearing "on secondary matters such as testimony to establish the chain of

possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, court and business records, and public documents." 725 ILCS 5/104-25(a).

The statute's silence on the admission of hearsay evidence on primary matters does not reflect the legislature's intent to bar such evidence. Subsection (a) does not evidence the legislature's intent to provide greater protection of a defendant's rights at a discharge hearing than at a criminal trial. Such an interpretation of subsection (a) would be inconsistent with the Illinois Supreme Court's interpretation in **People v. Waid,** 221 Ill. 2d 464, 851 N.E.2d 1210 (2006), which upheld the constitutionality of subsection (a) against due process and confrontation clause challenges.

Therefore, it was not error to admit hearsay evidence as provided by §115-10 at defendant's discharge hearing.

(Defendant was represented by Assistant Defender Robert Hirschhorn, Chicago.)

People v. Peterson, 404 Ill.App.3d 145, 935 N.E.2d 1123 (2d Dist. 2010)

1. Where an unfit defendant is unlikely to regain fitness within a year, the trial court must hold a discharge hearing to determine whether the evidence is sufficient to establish guilt beyond a reasonable doubt. If the evidence is insufficient to permit conviction at a criminal trial, or if the defendant is found not guilty by reason of insanity, an acquittal is entered. If the evidence of guilt satisfies the reasonable doubt standard, a finding of "not not guilty" is entered. The defendant is then subject to further treatment in an effort to restore fitness.

The discharge hearing is an "innocence-only" proceeding which results in a final adjudication of the case only if the defendant is acquitted.

2. The trial court erred by finding defendant "not not guilty," and should have entered an acquittal. Defendant was charged with knowingly failing to register a change of address as required by the Sex Offender Registration Act. However, the State presented no evidence supporting that charge, and at most proved that defendant was homeless for the entire period.

At the discharge hearing, the State argued two theories: that defendant gave a false address when he claimed to live at an address where the resident denied any knowledge of him, and that defendant failed to comply with the weekly reporting requirement imposed on homeless persons who are subject to the Registration Act. The court found that neither theory had been proven.

First, the fact that defendant was unknown to the resident at the address which defendant gave was insufficient to prove defendant provided a false address. Given defendant's documented mental deficiencies and memory problems, it was as likely that defendant confused two apartments at that address as that he knowingly gave false information.

Second, the weekly reporting requirement applies only to persons who lack a "fixed address," which is defined as an address at which the registrant stays five days a year. Because defendant could have stayed at the second apartment at least five days a year, the State failed to prove that he lacked a "fixed address" and was thus required to report weekly.

Nor did defendant's statement to police that he was homeless establish either that he gave a false address or that he was subject to weekly reporting. To a layman, having a "fixed address" (*i.e.,* a location to stay five days a year) is not inconsistent with being "homeless."

Because the State failed to prove that defendant knowingly provided false information or was required to report weekly, the evidence was insufficient to satisfy the reasonable doubt standard. The Appellate Court entered an acquittal in defendant's behalf.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

People v. Sedlacek, 2013 IL App (5th) 120106 (No. 5-12-0106, 3/28/13)

1. Article 104 sets out a comprehensive scheme for criminal defendants found unfit to stand trial and its provisions govern the procedures applicable to such defendants. When the issue of fitness involves the defendant's mental condition, the court is authorized to "order an examination of the defendant by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court." 725 ILCS 5/104-13(a). The court may also in its discretion appoint a qualified expert selected by the defendant to examine him. 725 ILCS 5/104-13(e). There is no provision in article 104 authorizing the State to select an expert to independently examine the defendant for fitness. Therefore, the trial court properly denied the State's request that the expert it selected to examine defendant for sanity also examine the defendant to determine his fitness for trial.

2. By statute, a defendant ordered to undergo treatment for the purpose of rendering him fit to stand trial is entitled to a status hearing every 90 days. 725 ILCS 5/104-20(a). Once it is determined that it is unlikely that an unfit defendant will attain fitness within one year after initially being found unfit, the cause must proceed to a discharge hearing. 725 ILCS 5/104-23.

The court found the defendant unfit for trial in October 2009. In the following year, no 90-day hearings were held, and in October 2010 the court received a report from the DHS indicating that the defendant would not be fit to stand trial in one year. Therefore, the court did not err as a matter of law when, over 27 months after the initial finding of unfitness, it granted the defense motion for summary judgment, concluding that the defendant was unfit and entitled to a discharge hearing.

People v. Stahl, 2013 IL App (5th) 110385 (No. 5-11-0385, 2/19/13)

A defendant is not fit to stand trial if he is unable to understand the purpose and nature of the proceedings against him or is unable to assist counsel in his defense. Once a *bona fide* doubt is raised as to the defendant's fitness to stand trial, the State must prove the defendant fit by a preponderance of the evidence. In determining a defendant's fitness, courts are to consider, among other things, the "defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged." 725 ILCS 5/104-16(b)(2). A trial court's determination of defendant's fitness to stand trial will be reversed only if it is against the manifest weight of the evidence.

As a result of a self-inflicted gunshot wound, defendant suffered from short-term memory impairment and was completely unable to recall any of the events at issue. Even assuming that adequate accommodations could be made for defendant's short-term memory impairment, under the express language of the fitness statute, his inability to recall the events at issue rendered him unfit to stand trial. That defendant may be able to discuss aspects of the trial with his attorney did not override the fact that he is unable to provide his attorney with any information regarding the crimes charged.

The Appellate Court affirmed the trial court's finding that defendant was unfit to stand trial.

Top